No. 92-1452

In the Supreme Court of the United States

OCTOBER TERM, 1992

CHARLIE MAE BOWENS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether the court of appeals lacked jurisdiction over an appeal from an *in rem* forfeiture proceeding after the *res* was released from the district court's control and sold.

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OPINION BELOW

The order of the court of appeals (Pet. App. 1a-2a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on December 18, 1992. The petition for a writ of certiorari was filed on March 8, 1993. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. On May 11, 1990, the United States filed an *in rem* action in the United States District Court for the Northern District of Georgia seeking forfeiture

under 21 U.S.C. 881 of a 1987 Cadillac automobile. The complaint alleged that petitioner's son, Ernest Swain, was the true owner of the Cadillac and that Swain had purchased the automobile with the proceeds of drug trafficking. Pet. App. 7a-12a. Petitioner filed a claim asserting that she was the true owner of the automobile and denying that it had been purchased with the proceeds of drug trafficking. Pet. App. 14a-16a.

The United States moved for summary judgment. On February 14, 1992, the district court granted the government's motion. The court relied on (1) deposition testimony of Ernest Swain that he had provided a portion of the cash used to purchase the Cadillac, (2) Swain's 1989 conviction in Georgia state court for drug trafficking offenses, (3) Swain's admission that his mother did not drive the automobile, and (4) petitioner's failure to show any legitimate source for the funds used to purchase the automobile. The court concluded that the United States had "made a sufficient showing that Swain used drug proceeds to purchase the car, and then placed its title in his mother's name in an effort to conceal its origin." Pet. App. 29a-31a.

2. Petitioner filed a notice of appeal and sought a stay in the district court of the district court's order granting summary judgment. On April 17, 1992, the district court granted the stay on condition that petitioner post a supersedeas bond, as required by Federal Rule of Civil Procedure 62(d). Petitioner failed to post a bond. Instead, on May 27, 1992, she filed a motion for a stay in the court of appeals asserting that a stay was necessary to prevent the

United States from selling the *res* and depriving the court of jurisdiction. On July 17, 1992, the court of appeals denied that motion. Pet. App. 62a.

On August 5, 1992, the United States Marshal sold the Cadillac. Subsequently, the government moved to dismiss petitioner's appeal on the ground that the sale of the *res* had deprived the court of appeals of jurisdiction. Pet. App. 63a-65a. The court of appeals granted the motion. Pet. App. 1a-2a. It relied on its decision in *United States* v. *Certain Real & Personal Property*, 943 F.2d 1292 (11th Cir. 1991), which held that the transfer of the *res* from the district where the forfeiture action was brought after a valid decree of forfeiture ends the power of the court over the property and deprives the court of appeals of jurisdiction. *Ibid.*

ARGUMENT

Petitioner asks (Pet. 5-6) the Court to grant the petition for a writ of certiorari in light of *Republic National Bank* v. *United States*, 113 S. Ct. 554 (1992). Because the decision in *Republic National Bank* rejected the reasoning on which the court of appeals relied in dismissing petitioner's appeal, we agree with petitioner that the court of appeals' judgment should be vacated and the case remanded to the court of appeals.

In *Republic National Bank*, as in this case, the district court granted judgment for the government on a complaint seeking *in rem* forfeiture of property in which the petitioner claimed an interest. The claimant filed a timely notice of appeal, but failed to file a supersedeas bond or obtain a stay of the district court's judgment. The government transferred the

res from Florida to the United States Treasury, and then moved to dismiss the appeal on the ground that the removal of the *res* from the judicial district where the action had been brought deprived the court of appeals of jurisdiction. The court of appeals granted the motion and dismissed the appeal. This Court reversed and remanded. The Court held that "in an *in rem* forfeiture action, the Court of Appeals is not divested of jurisdiction by the prevailing party's transfer of the res from the District." 113 S. Ct. at 559-560.

The reasoning of *Republic National Bank* is applicable in this case. Here, as in *Republic National Bank*, the court of appeals relied on the removal of the *res* from the control of the district court as a ground for dismissing the claimant's appeal. That reasoning in no longer valid in light of the Court's decision in *Republic National Bank*. Accordingly, the Court should vacate the court of appeals' decision and remand for further proceedings consistent with *Republic National Bank*.

CONCLUSION

The petition for certiorari should be granted, the decision of the court of appeals should be vacated, and the case should be remanded for reconsideration in light of *Republic National Bank* v. *United States*, 113 S. Ct. 554 (1992).

Respectfully submitted.

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